

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

ANTONIO VÉLEZ DÍAZ, et al.,

Plaintiffs,

v.

AMADO VEGA IRIZARRY, et al.,

Defendants.

Civil No. 03-2068 (JAF)

O R D E R

On February 9, 2006, we dismissed Plaintiffs' FTCA claims in this case without prejudice. Docket Document No. 75. Plaintiffs now move for reconsideration, urging us to consolidate any surviving state law claims in the present case with the FTCA claims made, on the basis of the same factual allegations, in a separate case, 05-2132 (JAF). Docket Document No. 77.

Plaintiffs' argument is premised on an error in the wording of our December 5, 2005 order issuing partial judgment, which erroneously stated, "the United States is substituted as the defendant for plaintiffs' state law claims." Docket Document No. 61. There are no surviving state law claims in this case, since under 28 U.S.C. § 2679(b)(1), the FTCA claims are exclusive of any state law remedy (although state law principles are often applied in the course of resolving an FTCA claim). See Davric Me. Corp. v. U.S. Postal Serv., 238 F.3d 58, 65 (1st Cir. 2001) (Westfall Act affords "federal employees who allegedly commit a common law tort absolute immunity where they were

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1 acting within the scope of employment . . . but allow[s] the suit to
2 proceed against the federal government"); Aversa v. United States, 99
3 F.3d 1200, 1207 (1st Cir. 1996) (Westfall Act rendered FTCA "the
4 exclusive remedy for money damages arising from the 'negligent or
5 wrongful act or omission' of a federal employee 'acting within the scope
6 of his office or employment.'" (quoting 28 U.S.C. § 2679(b)(1)). The
7 exception to this rule, which is that it "does not extend or apply to
8 a civil action . . . brought for a violation of the Constitution of the
9 United States," 28 U.S.C. § 2679(b)(2), is inapplicable here because the
10 First Circuit has found that Plaintiffs did not allege a constitutional
11 violation. Velez-Diaz v. Vega-Irizarry, 421 F.3d 71, 80-81 (1st Cir.
12 2005). As we clarified in our order, "the state law claims against FBI
13 agents . . . are DISMISSED WITH PREJUDICE." Docket Document No. 61.

14 As the Bivens claims were dismissed due to qualified immunity,
15 Velez-Diaz v. Vega-Irizarry, 421 F.3d at 81, the only remaining claims
16 in the present case were under the FTCA. For the reasons explained in
17 our February 9 order, the FTCA claims have been dismissed without
18 prejudice and there are no claims left, under the present cause of
19 action, to consolidate with Plaintiffs' claims in Civil No. 05-2132.

20 Plaintiffs' motion for reconsideration is **DENIED**.

21 **IT IS SO ORDERED.**

22 San Juan, Puerto Rico, this 13th day of March, 2006.
23

24 S/José Antonio Fusté
25 JOSE ANTONIO FUSTE
26 Chief U.S. District Judge